

## REMARKS

Claims 1-17 and 22-31 are pending in the application.

New claims 30 and 31 are added to the application.

No new matter is added to the application by the addition of these new claims to the application.

### I. TRAVERSE OF THE EXAMINER'S OBVIOUSNESS REJECTIONS

#### A. Independent Claims 1 And 13 Are Non-Obvious And Patentable

##### 1. Independent claim 1 is patentable

The examiner rejected claims 1-2, 4-8, 11-17 and 22 for obviousness over Blevins (USP 6,206,608) in view of Horton et al (USP 6,409,420). This rejection is traversed below.

The Examiner's rejection of independent claim 1 under 35 USC 103(a) over Blevins in view of Horton et al is based on a fundamental misconstruction of Blevins' disclosure. That is to say one feature of claim 1 which is absent from all of the references which have been cited during the examination of this application – Blevins not excepted – is that the loops of the net are oriented with a longer dimension in the fore and aft direction than in the transverse direction of the device, as exemplified by the elongate diamond shape of the net loops as seen in Figures 1, 7, 9 and 10B of the application. This is not, however, how the loops in the network of chains disclosed by Blevins are oriented. In this respect the “fore and aft” direction of the device is the direction extending from the leading (front) edge of the device, along which the spikes are located, to the trailing (rear) edge of the device along which in Blevins' case the bar 5 is located. Note column 2, lines 34-42 of Blevins where:-

“The device has a rear edge formed by a solid bar 5. Extending from the bar 5 is a series of main chains 10 that terminate at the front edge of the device. It is so denoted the front edge because it is the edge that a vehicle to be disabled first encounters. ... At the front edge of the device, a series of bases 20, each provided with a spike 30, is provided...”
--

In other words the fore and aft direction is the direction identified as “FA” on the copy of Figures 1 and 2 of Blevins (attached at Appendix A), and the transverse direction is the direction identified as “T”. It is, therefore, plainly seen from the attached Blevins Figures that each loop formed by the intersecting main chains 10 and cross chains 12 is of rectangular shape with a

longer dimension in the transverse direction than in the fore and aft direction of the device, namely the exact *opposite* of the orientation claimed. For at least this reason the examiner has not made out a prima facie case of obviousness of claim 1 and claims 1-2, 4-8, 11-17 and 22 are patentable for at least this reason.

Furthermore in the present invention the specified orientation of the loops contributes to the net's ability to elongate in the transverse direction before tightening, as explained on page 6, lines 3-8 of the application, and this feature is presented in claim 1 by the "whereby" clause following the specification of the loop orientation. The Examiner cites the Horton et al disclosure of Kevlar material to allege that the Horton et al net is capable of substantial elongation (Horton et al itself teaching no such elongation) but that is in any event a completely separate matter from the elongation capability which is contributed by the *orientation of the loops* in the present invention and which has no counterpart in either reference. For at least this reason the examiner has not made out a prima facie case of obviousness of claim 1 and claims 1-2, 4-8, 11-17 and 22 are patentable for at least this reason.

Still further, claim 1 specifies that in use "the net becomes wrapped around the front wheels of the vehicle, and the portion of the net between those wheels of the vehicle is pulled tight under the vehicle, thereby preventing further rotation of those wheels. This is not, however, the *modus operandi* of either reference in arresting a vehicle. On the contrary, as explained with reference to Figure 6E in column 3, lines 52-63, Blevins relies on the bar 5 to be brought up and contact the frame of the vehicle to prevent rotation of the tyres. As explained in previous Replies, Horton et al discloses a similar mechanism of arrest involving a bar attached to the net or alternatively acts to link the front and rear wheels together with the net to stop their rotation, but neither reference teaches the operation as recited in claim 1. Moreover one skilled in the art at the time of the invention reading the prior art as a whole would not consider any other mode of device operation.

For this reason as well, no combination of Blevins and Horton et al can result in a device as set forth in claim 1, which is therefore plainly non-obvious and patentable. For at least the same reason each of claims 2-8, 10-12, 17 and 23 which depend on claim 1 are also patentable.

## **2. Independent Claim 13 Is Non-Obvious And Patentable**

Independent claim 13 is non-obvious for the same reasons recited above with respect to Blevins not disclosing a net of which the loops are elongated in the fore and aft direction of the device as required by this claim. In addition, neither Horton nor Blevins disclose the claim 13 method of constructing their respective devices in which a net is deformed and retainers attached to maintain it in the deformed condition. Independent claim 13 is, therefore, non-obvious and patentable and for at least these reasons so are claims 14-16, 22, 24 and 25 which depend upon claim 13.

### **C. Independent Claims 26 And 29 Are Non-Obvious And Patentable**

The examiner rejected claims 10 and 23-29, inclusive of independent claims 26 and 29 under 35 USC 103(a) over Blevins in view of Horton et al and further in view of Cudmore et al. The rejected claims are non-obvious and patentable at least for each of the reasons recited below.

#### **1. There is no prima face case of obviousness**

Independent claims 26 and 29 both have the same recitation as claim 1 that in use “the net [or substrate in claim 29] becomes wrapped around the front wheels of the vehicle, and the portion of the net [or substrate] between those wheels of the vehicle is pulled tight under the vehicle, thereby preventing further rotation of those wheels”. Reference is directed to the foregoing where it is stated that this is not the *modus operandi* of either Blevins or Horton et al and it is submitted that for this reason alone claims 26 and 29 are non-obvious and patentable.

#### **2. Cudmore is non-analogous art that may not be considered**

The combination of Cudmore et al with Blevins and Horton et al is improper as Cudmore et al is concerned with non-analogous art. Only art that is analogous to a claimed invention may be employed in an obviousness determination. *In re Clay*, 966 F.2d 656, 658 (Fed. Cir. 1992). Prior art is not analogous if (1) the art is not from the same field of endeavor as the claimed invention – regardless of the problem addressed; and (2) the prior art reference from another field of endeavor is not pertinent to the particular problem faced by the inventor. *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986). The test for non-analogous art is met by Cudmore et al.

##### **a. Cudmore is not in the same field of endeavor**

Cudmore et al meets the first requirement of the non-analogous prior art test – it is not from the same field of endeavor as the claimed invention – vehicle arresting devices. Indeed,

Cudmore et al is not remotely related to the art of vehicle arresting devices. Instead it is directed to the landscaping industry (column 1, line 15) and more particularly discloses structures adapted to protect grass seeded areas (column 1, lines 6-7). This is clearly not an art area which one skilled in the art of vehicle arresting devices would be reasonably expected to turn to find solutions to their problems.

**b. Cudmore is not reasonably pertinent to the problems faced by the inventor**

A prior art reference that is not in the same field of endeavor is conclusively non-analogous if the purposes and uses of the invention and the prior art devices are different. *See In re Clay*, 966 F.2d at 659-60. A reference is not pertinent if, because of the matter with which the reference deals, it would not have logically commended itself to the inventor's attention. Clearly Cudmore et al. meets this second prong of the non-analogous prior art test as well.

The examiner takes the position that a person skilled in the art at the time of the invention would have provided the method and device of Blevins in view of Horton et al. with the step of penetrating the junction points of the net with spike members as taught by Cudmore et al. "in order to quickly replace used or damaged tire spikes". MPEP §2141.01(a) discusses when an examiner may rely upon non-analogous art. The MPEP section notes that "any need or problem known in the field of endeavor at the time of the invention and addressed by the patent [or application at issue] can provide a reason for combining the elements". The same MPEP section goes on to state that a non-analogous reference may be reasonably pertinent "if it is one which, because of the matter with which it deals, logically would have commended itself to the examiner's attention." *Id.*

In this case, the Cudmore et al reference does not deal with matter which logically would have commended itself to the inventor's attention. Firstly, the claimed invention is directed as a whole to vehicle arresting devices, one element of which is a particularly oriented and designed net or substrate that includes tyre piercing spikes. Cudmore et al does not deal with vehicle arresting devices at all. The only relationship that Cudmore has with the claimed invention is that it uses conical members - that the examiner apparently analogizes to spikes - that pass through apertures in a plastic grid that is placed on a lawn. Secondly, the claimed invention includes upwardly oriented tyre piercing spikes. Cudmore et al on the other hand discloses conical members – not necessarily spikes – that are directed downwardly in use (including in

Figure 4 which shows the reverse side of the respective grid). The spikes are inserted into soil and serve to secure the grid against the ground. Clearly, one skilled in the art at the time of the invention who was seeking to solve problems associated with tyre piercing spikes associated with a vehicle arresting device nets would not have considered Cudmore's disclosure of conical members that are directed through holes in a protective grid and into the ground to secure the grid against the ground. For at least these reasons, Cudmore is non-analogous art that may not be combined with Blevins and Horton. As a result, independent claims 26 and 29, their dependent claims 27-28 as well as claims 10 and 23-25 are non-obvious and patentable.

### **3. The prior art combination would not result in the claimed invention**

Independent claims 26 and 29 are further non-obvious and patentable because, even if one skilled in the art at the time of the invention attempted to combine Cudmore et al with Blevins and Horton et al the combination would not lead to the subject-matter of either claim 26 or claim 29. This is because the conical members of Cudmore et al (note that Cudmore et al never refers to them as "spikes") are used as connectors to connect two grass protecting grids together.

There is no equivalent function required in the present invention nor in Blevins or Horton et al, however, where there is no hint or suggestion in either reference to connect two separate nets together. On the other hand what both claim 26 and claim 29 require is that the spikes penetrate the net [or substrate] to attach *the spikes themselves* to the same. There is no equivalent disclosure in Cudmore et al that the conical members penetrate the actual grid by which they are carried so it would not be obvious, as alleged by the Examiner, that they provide a means "to quickly replace used or damages tire spikes".

For each and every one of these reasons independent claims 26 and 29 are plainly non-obvious and patentable and for at least the same reasons so are claims 27 and 28 which depend on claim 26.

### **D. Evidence Of Secondary Considerations Of Non-Obviousness**

Attached at Appendix A of Applicant's January 21, 2009 Office Action Reply was a marketing brochure prepared by the Applicant that describes the development and testing and use of the claimed device. The brochure was presented to the examiner as evidence that the claimed invention has met with commercial success thereby providing secondary evidence of invention non-obviousness. The examiner's April 17, 2009 Office Action did not comment on or even

acknowledge Applicant's evidence. The applicant maintains that the brochure provides evidence of two secondary considerations of non-obviousness; (1) it demonstrates that claimed device has fulfilled a long felt need; and (2) it demonstrates that the claimed device has met with commercial success. The Applicant asserts that all pending application claims are non-obvious and patentable in view of this evidence of secondary considerations of non-obviousness.

### **III. NEW CLAIMS 30-31**

Finally, two new dependent claims are attached to add to the application and which are patentable at least for the same reasons as their parent claims. Furthermore none of the references teach the elongate diamond shaped net loops of new claim 31.

### **IV. THE ALLOWABLE SUBJECT MATTER**

The applicant acknowledges that claim 9 stands allowable but objected to for depending upon a rejected base claim.

### **V. IDS ISSUE**

The Applicant wishes to point out that it does not appear that the examiner has cited the newly cited Blevins et al patent in a form PTO-892.

### **CONCLUSION**

Pending application claims 1-17 and 22-31 are believed to be patentable for the reasons recited above. Favorable reconsideration and allowance of all pending application claims is, therefore, courteously solicited.

Date: July 22, 2009

By: /A. Blair Hughes/  
A. Blair Hughes  
Reg. No. 32,901  
312-913-2123

## **Appendix A**

